FILED

No. _____ 05-466 AUG - 8 2005

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In The
Supreme Court of the United States

DELROY C. SCHEELER, individually and on behalf of Craig A. Scheeler, and RHONDA L. SCHEELER, individually and as Trustee on behalf of Craig A. Scheeler,

Petitioners,

vs.

CITY OF ST. CLOUD, MINNESOTA, COUNTY OF STEARNS, MINNESOTA, DENNIS O'KEEFE, individually and in his former official capacity as Chief of Police for the City of St. Cloud, Minnesota, LARRY MEYER, individually, and in his former official capacity as Mayor of the City of St. Cloud, Minnesota, DR. DAVID FREDRICKSON, individually and in his official capacity as Medical Examiner for the County of Stearns, Minnesota, LEE MAYAVSKI, individually and in his official capacity as a Police Officer for the City of St. Cloud, Minnesota and a Deputy Medical Examiner for the County of Stearns, Minnesota, DAVID JOHNSON, individually and in his official capacity as a Police Officer for the City of St. Cloud, Minnesota, GARY LEININGER, individually and in his official capacity as a Police Officer/Evidence Technician for the City of St. Cloud, Minnesota, DAVID LABEAUX, individually and in his official capacity as a Police Officer for the City of St. Cloud, Minnesota,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Eighth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

Delroy Scheeler and Rhonda Scheeler, Plaintiffs, (hereinafter "Scheelers") introduced evidence of a formal written policy of Stearns County, that when implemented, caused constitutional harm to Scheelers' Right of Access to the Courts. Scheelers also introduced credible evidence that the County of Stearns and the City of St. Cloud ratified and condoned the actions and inactions of their officers which caused Scheelers' Right of Access to Court to be rendered meaningless.

I. Whether implementation of the official policy of a municipal defendant that results in constitutional injury to a party satisfies the requirements for municipal liability as set forth in *Monell v. Department of Social Services of the City of New York*, 436 U.S. 658, 691, 98 S. Ct. 2018, 56 L. Ed. 2d 611 (1978) and *City of St. Louis v. Praprotnik*, 108 S. Ct. 915, 485 U.S. 112, 99 L. Ed. 2d 107 (1988)?

Scheelers presented to the Court a report from the State of Minnesota, Office of Crime Victim's Ombudsman, which found to be true all allegations made by Scheelers when the Ombudsman concluded that the St. Cloud Police failed to investigate, failed to preserve evidence, and failed to follow their training and departmental policies in the Scheeler case.

QUESTIONS PRESENTED FOR REVIEW – Continued

II. Whether plaintiffs in a 42 U.S.C. §1983 Right to Access Courts Claim were held to a higher standard of deliberate indifference than required by *Farmer v. Brennan*, 511 U.S. 825, 114 S. Ct. 1970, 128 L. Ed. 2d 811 (1994) when plaintiffs, in opposition to a motion for summary judgment, introduced evidence proving the state actors had both time to deliberate and objective knowledge of a serious risk of injury to plaintiffs and the lower court ruled that time to deliberate and objective knowledge of a serious risk of injury, as a matter of law, will not support a finding of deliberate indifference in a 42 U.S.C. §1983 claim?

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JURISDICTION

The Memorandum decision of the Eighth Circuit Court of Appeals affirming the judgment of the District Court was filed on March 31, 2005. A timely hearing for rehearing en banc was denied by Order filed May 10, 2005. The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

STATUTES INVOLVED

42 U.S.C. §1983.

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section,

any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

Minnesota Statute §390.31 Subdivision 1.

It is declared to be in the public interest for medical doctors to conduct the medical investigations deemed necessary.

Minnesota Statute §390.33 Subdivision 1.

A county board shall appoint as permanent county medical examiner a doctor of medicine or osteopathy licensed to practice pursuant to chapter 147, or similar laws in any other state. A county medical examiner shall perform the duties imposed upon medical examiners by sections §390.31 to §390.35 and serve at the pleasure of the county board.

STATEMENT OF THE CASE

On March 24, 1997, Craig A. Scheeler died of a gunshot wound from a .357 Taurus handgun. The bullet entered his right temple and exited his left temple. Two witnesses were present at the scene when St. Cloud Police, Stearns County Deputy Medical Examiner and Paramedics arrived at the scene. The two witnesses told police that Craig Scheeler had shot himself. Craig Scheeler was taken to the hospital where he died one hour later. Having only the two witnesses' statements as evidence that Craig Scheeler had shot himself, the St. Cloud Police and Stearns County Medical Examiner's Office officially closed

the case, with no further investigation. No autopsy was performed, which caused critical evidence of the body to be destroyed. No gunshot residue or blood spatter tests were ever done. The scene was never secured, or considered to be a possible homicide scene, which again caused critical evidence to be destroyed. Delroy Scheeler and Rhonda Scheeler, father and mother of Craig A. Scheeler, sued the County of Stearns, the City of St. Cloud, and the individual officers under 42 U.S.C. §1983 for rendering their right to access the courts meaningless by failing to investigate, and failing to preserve known and available evidence of the scene and of the body.

The District Court granted summary judgment to the County of Stearns and the City of St. Cloud by concluding that defendants were not "persons" under 42 U.S.C. §1983 (App. 47). The District Court did not address or acknowledge Scheelers' *Monell* claim of liability due to an official policy. Scheelers appealed to the Eighth Circuit Court of Appeals. The Eighth Circuit Court of Appeals agreed with Scheelers that the County of Stearns and the City of St. Cloud were "persons" under 42 U.S.C. §1983 (App. 10), but dismissed Scheelers' claim nonetheless by concluding that Scheelers had not shown a "lack of training, or a custom or practice." (App. 11). The Eighth Circuit Court of Appeals did not address or acknowledge Scheelers' official written policy claim against the County of Stearns, or the official ratified policy claim against the City of St. Cloud. The Eighth Circuit panel offered no reason for their silence on Scheelers' *Monell* claim.

Scheelers presented evidence to the District Court and the Eighth Circuit Court of Appeals proving the County of Stearns has an official written policy that allows deputy medical examiners to conduct post-mortem body exams,

medical investigations and determine cause and manner of death in all deaths in Stearns County, contrary to the mandate in Minnesota Statutes, which requires a medical doctor to fulfill these duties.

Official written policy of Stearns County

> "In 1993, the Medical Examiner System replaced the County Coroner in Stearns County. The Detective/Deputy Medical Examiner assumes the responsibility for the investigation of all unattended deaths which occur in Stearns County. A determination is made as to the manner and cause of all reportable deaths. This determination is achieved through a variety of post-mortem examinations conducted by or at the direction of the Detective/Deputy Examiner."

Evidence was presented to the courts (Trial testimony of Officer/Deputy Medical Examiner Lee Mayavski) that established Stearns County Deputy Examiner Mayavski, is not a medical doctor as required by Minnesota Statute:

Minnesota Statutes §390.31 and §390.33 state the following:

§390.31 Subdivision 1. It is declared to be in the public interest for medical doctors to conduct the medical investigations deemed necessary.

§390.33 Subdivision 1. A county board shall appoint as permanent county medical examiner a doctor of medicine or osteopathy licensed to practice pursuant to chapter 147, or similar laws in any other state. A county medical examiner shall perform the duties imposed upon medical examiners by sections 390.31 to 390.35 and serve at the pleasure of the county board.